

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SEAN EARLEY,

Plaintiff,

v.

**9:08-CV-669
(FJS/DJS)**

**ANTHONY J. ANNUCCI, Executive Commissioner
and Counsel, New York State Department of
Correctional Services,**

Defendant.

APPEARANCES

OF COUNSEL

MULDOON GETZ & RESTON

144 Exchange Boulevard
Suite 402
Rochester, New York 14614
Attorneys for Plaintiff

JON P. GETZ, ESQ.

THE EATON LAW FIRM

27 Locust Street
Pittsford, New York 14534
Attorneys for Plaintiff

K. WADE EATON, ESQ.

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol
Albany, New York 12224
Attorneys for Defendant

KEITH J. STARLIN, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Stewart's February 28, 2017 Report-Recommendation and Order. *See* Dkt. No. 130. The parties did not file any objections.

When a party does not object to a magistrate judge's report-recommendation, the court

reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Stewart's February 28, 2017 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Stewart's February 28, 2017 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that, with regard to Plaintiff's first cause of action, Plaintiff's motion for partial summary judgment, *see* Dkt. No. 124, is **DENIED**; and Defendant's motion for summary judgment, *see* Dkt. No. 125, is **GRANTED**; and this claim is **DISMISSED**; and the Court further

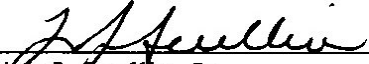
ORDERS that, with regard to Plaintiff's second and third causes of action, alleging due process violations stemming from the continued imposition and enforcement of post-release supervision after *Earley II*, Plaintiff's motion for partial summary judgment, *see* Dkt. No. 124, is **GRANTED in part** as to liability for the time period of **August 31, 2006**, the date of the *Earley II* decision, through **June 27, 2007**, when Plaintiff was released from DOCS's custody; and Defendant's motion for summary judgment, *see* Dkt. No. 125, is **GRANTED in part** to the extent that Defendant is entitled to qualified immunity prior to that time period and to the extent that Plaintiff has asserted any claims against Defendant in his official capacity, which are **DISMISSED** in accordance with the Eleventh Amendment; and the Court further

ORDERS that, with regard to Plaintiff's fourth cause of action, regarding the Division of Parole acting in concert with DOCS, Defendant's motion for summary judgment, *see* Dkt. No. 125, is **GRANTED**; and this claim is **DISMISSED**; and the Court further

ORDERS that this case is trial ready on the issue of damages with regard to Plaintiff's second and third causes of action;¹ and the Court will issue a trial order in due course.

IT IS SO ORDERED.

Dated: March 31, 2017
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge

¹ The Court encourages the parties to consent to proceed before Magistrate Judge Stewart for the trial of this matter on the issue of damages due to the congestion of this Court's calendar. In the event the parties consent to proceed before Magistrate Judge Stewart, they can find the consent form on the Court's website, www.nynd.uscourts.gov under Forms/Civil/All Forms/AO-85 - Notice Consent and Reference of Civil Action to Magistrate. Both parties must sign this document before submitting it to the District Judge for approval. **The Clerk of the Court is directed to attach a blank consent form to this Order.**